RECORD AND BRIEFS

Supreme Court, U.S.
FILED
FEB 7 - 2012
CLERK

Nos. 11-246 and 11-247

In The Supreme Court of the United States

MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS,
Petitioner,

v.

DAVID PATCHAK, *ET AL.*,
Respondents.

KEN L. SALAZAR, SECRETARY OF THE INTERIOR, *ET AL.*,
Petitioners,

v.

DAVID PATCHAK, *ET AL.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS

Conly J. Schulte
Shilee T. Mullin
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, CO 80302

Amit Kurlekar
AKIN, GUMP, STRAUSS, HAUER & FELD LLP
580 California Street, Suite 1500
San Francisco, CA 94104

Patricia A. Millett
Counsel of Record
James T. Meggesto
James E. Tysse
AKIN, GUMP, STRAUSS, HAUER & FELD LLP
1333 New Hampshire Ave., NW
Washington, DC 20036
(202) 887-4000
pmillett@akingump.com

Michael C. Small
AKIN, GUMP, STRAUSS, HAUER & FELD LLP
2029 Century Park East
Suite 2400
Los Angeles, CA 90067

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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QUESTIONS PRESENTED

I. Whether the Quiet Title Act and its reservation of the United States' sovereign immunity in suits involving "trust or restricted Indian lands" apply to all suits concerning land in which the United States "claims an interest," 28 U.S.C. § 2409a(a), as the Seventh, Ninth, Tenth, and Eleventh Circuits have held, or whether they apply only when the plaintiff claims title to the land, as the D.C. Circuit held.

II. Whether prudential standing to sue under federal law can be based on either (i) the plaintiff's ability to "police" an agency's compliance with the law, as held by the D.C. Circuit but rejected by the Fifth, Sixth, Seventh, and Eighth Circuits, or (ii) interests protected by a different federal statute than the one on which suit is based, as held by the D.C. Circuit but rejected by the Federal Circuit.

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Cohen, Felix S., *Handbook of Federal Indian Law* (2005 ed.) 42

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H.R. Rep. No. 1656, 94th Cong., 2d Sess. (1976) ..... *passim*

Jones, Al, *Gun Lake Casino CEO John Shagonaby to offer insights Friday as WMU's Keystone Breakfast speaker,* KALAMAZOO GAZETTE, Jan. 23, 2012, http://www.mlive.com/business/west-michigan/index.ssf/2012/01/gun_lake_casino_ceo_john_shago.html 7, 8

Knape, Chris, *Gun Lake Casino opens, brings gambling on U.S. 131 between Kalamazoo, Grand Rapids,* THE GRAND RAPIDS PRESS, Feb. 10, 2011, http://www.mlive.com/business/west-michigan/index.ssf/2011/02/gun_lake_casino_opens_brings_g.html 7

Press Release, *Gun Lake Tribe's Second State and Local Revenue Sharing Payments Exceed $7.8 Million,* http://www.mbpi.org/PDF/News/Press%20Releases/PR_Revenue_Sharing_Announcment.pdf 7

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Steadman, John Montague, *"Forgive U.S. Its Trespasses?": Land Title Disputes With the Sovereign—Present Remedies and Prospective Reform*, 1972 Duke L. J. 15 (1972) 29

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 632 F.3d 702. The decision of the

district court (Pet. App. 25a-37a) is reported at 646 F. Supp. 2d 72.[1]

JURISDICTION

The court of appeals entered its judgment on January 21, 2011. Pet. App. 1a. The court denied petitions for rehearing and rehearing en banc from both the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians and the United States on March 28, 2011. Pet. App. 38a-41a. Timely petitions for writs of certiorari were filed on August 25, 2011 by both the Match-E-Be-Nash-She-Wish Band and the United States, and both petitions were granted by this Court on December 12, 2011. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The relevant statutory provisions are reproduced at No. 11-246, Pet. App. 43a-49a, and in an addendum to this brief.

STATEMENT OF THE CASE

A. Legal Framework

1. Congress enacted the Quiet Title Act ("QTA"), 28 U.S.C. § 2409a, to provide "the exclusive means by which adverse claimants could challenge the United States' title to real property" and to prescribe the precise terms on which the United States' sovereign immunity from suits disputing title to real property in which the United States holds an interest would be waived. *Block v. North Dakota ex rel. Bd. of Univ.*

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[1] Throughout this brief, "Pet. App." refers to the petition appendix filed in No. 11-246.

and Sch. Lands, 461 U.S. 273, 286 (1983). The QTA provides generally that the "United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. § 2409a(a). Congress, however, expressly retained intact the United States' sovereign immunity with respect to "trust or restricted Indian lands," providing that "[t]his section does not apply to [such] lands[.]" *Id.*[2]

The QTA further provides that "[n]o preliminary injunction shall issue in any action brought under this section" against the United States, 28 U.S.C. § 2409a(c), nor shall the United States "be disturbed in possession or control of any real property involved in any action under this section," but instead the government must be permitted to pay compensatory damages in lieu of any permanent relief displacing its control over real property, *id.* § 2409a(b).

2. The Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, was enacted four years after the QTA, and it separately waives the United States' sovereign immunity from suit for actions "seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity," *id.* § 702. The

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[2] Congress further provided that Section 2409a does not "apply to or affect actions which may be or could have been brought" under a variety of other comprehensive statutory schemes, such as the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-2680, and the Tucker Act, *id.* § 1491. *See id.* § 2409a(a).

APA, however, does not "affect[] other limitations on judicial review," nor does it "confer[] authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." *Id.*

3. Congress enacted the Indian Reorganization Act, 25 U.S.C. §§ 461 *et seq.*, to promote economic development for Indians and tribal self-government. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152 (1973). To further that objective, the Reorganization Act authorizes the Secretary of the Interior, in his or her discretion, "to acquire * * * any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, * * * for the purpose of providing land for Indians." 25 U.S.C. § 465.

Before deciding whether to place land in trust and thus before the QTA's protections attach, the Secretary provides direct notice of the trust application to any affected state and local governments and an opportunity for them to object or to provide written comments regarding "the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments." 25 C.F.R. § 151.10 (governing acquisitions of land "within or contiguous to an Indian reservation"); *see id.* § 151.11 (governing acquisitions "outside of and noncontiguous to the tribe's reservation"). Once the Secretary completes his or her review and makes a determination to place land into trust, the Secretary issues a general public notice that affords "interested parties" a 30-day window to file suit challenging the trust decision before the land is placed into trust and thus before

the QTA's bar to review attaches. *See* 61 Fed. Reg. 18,082 (Apr. 24, 1996); 25 C.F.R. § 151.12(b).[3]

B. Factual Background

Petitioner, the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, commonly known as the Gun Lake Tribe ("Gun Lake"), is a federally recognized Indian tribe situated near Kalamazoo, Michigan. *See Michigan Gambling Opposition ["MichGO"] v. Kempthorne*, 525 F.3d 23, 26 (D.C. Cir. 2008) (per curiam). In 2001, Gun Lake requested that the Secretary place a 147-acre parcel close to its ancestral homeland, known as the "Bradley Tract," into trust pursuant to the Reorganization Act. Pet. App. 27a. The application indicated that Gun Lake sought trust status for its land "to promote tribal economic development, self-sufficiency and a strong tribal government capable of providing its members with sorely needed social and educational programs." J.A. 41. The application further identified Gun Lake's intention to construct and operate a gaming facility on the Bradley Tract. *Id.*; Pet. App. 2a. At the time, the Bradley Tract consisted predominantly of shuttered and unused factory and warehouse buildings, situated between a highway and a railroad line. *Michigan Gambling Opposition v. Norton*, 477

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[3] That process of postponing the trust acquisition pending judicial review followed an Eighth Circuit decision holding that the Reorganization Act would be unconstitutional if it did not afford a fair opportunity for judicial review. *See South Dakota v. United States Dep't of the Interior*, 69 F.3d 878, 880 (8th Cir. 1995), *cert. granted and judgment vacated sub nom. Department of the Interior v. South Dakota*, 519 U.S. 919 (1996).

F. Supp. 2d 1, 10 n.13 (D.D.C. 2007). The land is zoned for light industrial and commercial use. *Id.*

The Secretary provided specific notice of Gun Lake's trust application to the state and local governments whose taxing and regulatory authority over the Bradley Tract would be affected were the federal government to place the land into trust. *See* 25 C.F.R. § 151.10. The Secretary then undertook a lengthy administrative review of Gun Lake's application that included not only a determination of the land's eligibility for trust status under the Reorganization Act, but also the conduct of a required environmental assessment under the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370h, and a gaming-eligibility determination under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701–2721 ("IGRA"). *See MichGO*, 525 F.3d at 27. Following the completion of those reviews, the Secretary announced her intention to place the Bradley Tract into trust. Pet. App. 26a-27a.

Pursuant to applicable regulations, the Secretary advised that her "acceptance of the land into trust" would not occur for 30 days so that "interested parties" could, during that time period, seek judicial review and challenge the Secretary's action "before transfer of title to the property occurs." 70 Fed. Reg. 25,596 (May 12, 2005); Pet. App. 3a, 7a-8a.

Within that 30-day waiting period, an organization called Michigan Gambling Opposition ("MichGO") sued on the grounds that the trust acquisition violated the National Environmental Policy Act and IGRA, and that Section 5 of the Reorganization Act is an unconstitutional delegation of congressional power. *See MichGO*, 525 F.3d at 26.

The organization's claims were rejected on the merits by both the district court and the court of appeals. *See id.* at 28-33; *Michigan Gambling Opposition*, 477 F. Supp. 2d at 6-22. After this Court denied the organization's petition for a writ of certiorari, 129 S. Ct. 1002 (2009), the Secretary placed the Bradley Tract into trust for Gun Lake and thereby transferred title to the property to the United States. Pet. App. 31a n.10. In April 2009, the Secretary approved, by operation of law, a gaming compact negotiated by the State of Michigan and Gun Lake. 74 Fed. Reg. 18,397, 18,397-18,398 (Apr. 22, 2009).

On February 10, 2011, Gun Lake opened a gaming facility on a portion of the trust land that borders U.S. Highway 131.[4] Other portions of the trust land are used for tribal governmental offices, water treatment facilities, a waste water plant, and a public safety office. *See* C.A. App. 535-544. The business has since created more than 900 jobs and generated more than $10.3 million in revenue-sharing funds for local schools and State and local governments.[5]

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[4] *See* Chris Knape, *Gun Lake Casino opens, brings gambling on U.S. 131 between Kalamazoo, Grand Rapids*, THE GRAND RAPIDS PRESS, Feb. 10, 2011, http://www.mlive.com/business/west-michigan/index.ssf/2011/02/gun_lake_casino_opens_brings_g.html.

[5] *See* Press Release, *Gun Lake Tribe's Second State and Local Revenue Sharing Payments Exceed $7.8 Million*, http://www.mbpi.org/PDF/News/Press%20Releases/PR_Revenue_Sharing_Announcment.pdf; Al Jones, *Gun Lake Casino CEO John Shagonaby to offer insights Friday as WMU's Keystone Breakfast speaker*, KALAMAZOO GAZETTE, Jan. 23, 2012, http://www.mlive.com/business/west-

C. Procedural History

1. After the 30-day period for challenging the trust decision had passed and after the court of appeals had rejected MichGO's challenges, respondent David Patchak, who "is either a member of MichGO or closely affiliated with MichGO," filed his own suit under the APA alleging that the Secretary lacked the legal authority under the Reorganization Act to place the land into trust.[6] Respondent asserted standing on the ground that "he will be exposed to and injured by the negative effects of building and operating" a gaming facility, including changes in the alleged "rural character" of the area, "loss of aesthetic and environmental qualities," "increased property taxes," "weakening of the family atmosphere of the community," and "other aesthetic, socioeconomic, and environmental problems." J.A. 30. Respondent sought, *inter alia*, a declaration that the Secretary's decision to take title to the land in trust was "unlawful[]" and an injunction "revers[ing] the decision to take the Property into trust," which would require the United States to relinquish title. *Id.* at 38-39; *see* 25 U.S.C. § 465 ("Title to any lands or rights acquired pursuant to this Act * * * shall be taken in the name of the United States in trust[.]"); U.S. C.A. Br. 41 ("To obtain any meaningful relief in this case, Patchak

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michigan/index.ssf/2012/01/gun_lake_casino_ceo_john_shago.html.

[6] Declaration of David K. Sprague in Support of Intervenor-Defendant's Opp. to Pltf. Mot. to Stay, No. 08cv1331, at 5 (D.D.C. Oct. 27, 2008) (Dkt. 31).

needs the courts to set aside Interior's land-into-trust decision, thus requiring the United States to relinquish its title to the Bradley property."); Resp. C.A. Br. 26 (asking court "to order the Bradley Tract taken out of trust").

Gun Lake intervened as a defendant in district court. Pet. App. 4a. Gun Lake and the Secretary moved to dismiss respondent's suit as barred by the QTA's express retention of sovereign immunity from suits challenging the United States' title to "trust or restricted Indian lands," 28 U.S.C. § 2409a(a). *See* J.A. 3. Gun Lake and the Secretary also moved to dismiss for lack of prudential standing on the ground that the interests that respondent asserted were not within the zone of interests protected by the only statute under which he sued, the Reorganization Act. Pet. App. at 30a.

2. The district court dismissed respondent's complaint on prudential standing grounds. Pet. App. 25a-36a. "Plaintiff, without a doubt," the court explained, "is not an intended beneficiary of the IRA," which Congress enacted "to enable tribal self-determination, self-government, and self-sufficiency in the aftermath of 'a century of oppression and paternalism.'" *Id.* at 33a (quoting *Mescalero Apache Tribe*, 411 U.S. at 152). "Rather, plaintiff seeks to vindicate only his own environmental and private economic interests," which "could not be further divorced" from the Reorganization Act's purposes. Pet. App. 33a-34a.

With respect to respondent's professed "interest in ensuring that only qualified tribes receive benefits under the IRA," the court explained that "such an interest, if true, is indistinguishable from the general

interest every citizen or taxpayer has in the government complying with the law." Pet. App. 34a. "To find that plaintiff has prudential standing on this basis alone," the court concluded, "would make a mockery of the prudential standing doctrine altogether." *Id.*

The court further held that respondent's allegations of injuries arising from gaming or alleged environmental and aesthetic harms "cannot save plaintiff's case" because there is "no evidence indicat[ing] that the [Reorganization Act] focuses on or otherwise seeks to protect the interests of the surrounding community or the environment." Pet. App. at 35a n.11. Those interests, the court explained, might be addressed by the National Environmental Policy Act or IGRA, but respondent sought no relief under those statutes as such claims had already been rejected in the *MichGO* litigation. *Id.*

Finally, the district court noted that its "continuing subject matter jurisdiction * * * [was] also seriously in doubt" under the QTA's express retention of sovereign immunity for suits challenging the United States title to "trust or restricted Indian lands," 28 U.S.C. § 2409a(a). Pet. App. 36a n.12.

3. The court of appeals reversed. Pet. App. 1a-24a. The court first held that respondent had prudential standing. The court acknowledged that respondent was not an intended beneficiary of the Reorganization Act, *id.* at 10a-11a, but held that prudential standing devolves "not on those who Congress intended to benefit, but on those who in practice can be expected to police the interests that the statute protects," *id.* at 6a. Although

respondent's suit challenged only the Secretary's trust decision under the Reorganization Act, the court of appeals ruled that the prudential standing inquiry "must be evaluated in light of the intended use of the property," and because Gun Lake referenced IGRA in its fee-to-trust application, "[t]aken together," that Act and the Reorganization Act "arguably protected [respondent]" from his asserted environmental and aesthetic injuries. *Id.* at 9a. The court then ruled that, because respondent's injuries are "cognizable" and allegedly protected by IGRA, he had prudential standing to sue under the Reorganization Act. *Id.* at 11a.

With respect to the QTA, the court of appeals held that the "trust or restricted Indian lands" provision of the statute does not bar respondent's suit because, in the court's view, that provision's retention of the United States' sovereign immunity applies only when "the plaintiff is claiming an interest in real property contrary to the government's claim of interest." Pet. App. 18a.

SUMMARY OF ARGUMENT

As a matter of both sovereign immunity and prudential standing principles, respondent's suit is barred at the threshold because he invokes the wrong statute to relitigate already rejected claims in an effort to obtain remedies that Congress has expressly proscribed and that the statute he invokes could not effectively provide in any event.

I. Absent an express and unequivocal waiver of sovereign immunity, the United States cannot be sued. There is no such waiver of immunity for lawsuits challenging the United States' title to or

legal interest in lands held in trust for Indian tribes or individuals. Quite the opposite, the text of the Quiet Title Act explicitly and unconditionally retains the United States' full sovereign immunity from suits involving "trust or restricted Indian lands." 28 U.S.C. § 2409a(a). Congress was also unequivocal that, to the extent that the United States can be sued over "a disputed title to real property in which the United States claims an interest," *id.*, no preliminary or permanent injunctive relief can issue that would supplant the United States' "possession or control of any real property," *id.* § 2409a(b) & (c).

The court of appeals nevertheless held that respondent can obtain the very type of relief that is statutorily forbidden against the very type of property for which sovereign immunity was statutorily preserved in full. That was wrong.

First, there is no explicit and unambiguous way to get to that outcome in the statutory text. Congress did not carve trust lands out of its waiver as a mere condition on lawsuits claiming title to those same lands. By its plain text, the trust lands provision is an express and unqualified retention of full sovereign immunity over such lands. And it reflects a conscious congressional judgment that the countervailing cost to important national interests that such litigation would inflict makes a waiver of immunity unwarranted. Whether the plaintiff claims title himself or simply objects to the United States' title, the legal effect is the same, because title will inevitably be quieted in someone else, and the harm to national interests is the same.

Second, the court of appeals reasoned that the QTA authorizes suit only by plaintiffs asserting their

own title to property. Even assuming that narrow reading were correct (which is unclear), the court of appeals drew exactly the wrong conclusion. This Court has recognized on repeated occasions that the QTA is the type of precisely drawn, detailed statute that preempts resort to general remedial schemes and makes the QTA the "exclusive means by which adverse claimants could challenge the United States' title to real property." *Block v. North Dakota ex rel. Board of University and School Lands*, 461 U.S. 273, 285-286 (1983). When Congress carves certain claims and remedial mechanisms out of such detailed statutory schemes, the proper meaning of that exclusion is that those suits are barred. It is not that those plaintiffs asserting claims and seeking remedies that Congress expressly proscribed can go invoke generalized remedial schemes like the Administrative Procedure Act to end-run Congress's judgment.

Third, there is no sound reason why Congress would have wanted to afford plaintiffs with the most remote injuries and indirect interests in the land *greater* remedies and far less restricted procedural options than those who assert their own title to the land and thus who are the most directly injured by the federal government's infringing interest in the land.

Finally, the APA's general waiver of immunity does not help respondent. Congress expressly provided that the APA's waiver does not extend to claims for which another statute "expressly or impliedly forbids the relief which is sought" or imposes "limitations on judicial review." 5 U.S.C. § 702. This Court has already held in *Block* that the

QTA is exactly one of those other statutes to which Section 702 refers and thus the APA cannot be read in a way by which "the Indian lands exception to the QTA would be rendered nugatory." 461 U.S. at 285.

II. Respondent's complaint stumbles at the starting gate for yet another reason: he lacks prudential standing. A foundational requirement of prudential standing is a showing that the plaintiff falls within the zone of interests of the statutory provision under which he has filed suit, which in this case is the Indian Reorganization Act. Respondent's asserted anti-gaming, aesthetic, and environmental injuries, however, lack any anchor in the Reorganization Act's text, provisions, or recognized purposes. He neither is an Indian or tribal beneficiary of the Act, nor is he positioned similarly to the states and local governments on whose regulatory jurisdiction the Secretary's trust decisions directly operate.

Indeed, respondent does not really claim any injury arising from the trust decision at all. Only a small portion of the entire trust land is used for gaming purposes, and respondent asserts no legal injury from or objection to how roughly 75% of the trust land is used. He instead objects to how Gun Lake, not a federal agency, is using a single portion of the lands now that they are in trust. Those objections to the gaming use and alleged environmental effects, however, are addressed by other statutes (*i.e.*, the Indian Gaming Regulatory Act and the National Environmental Policy Act) under which respondent chose not to sue, presumably because the court of appeals had already rejected such claims in earlier litigation. Those claimed

injuries from one use of the land do not arise from the Secretary's decision to place the land into trust in the first place.

The court of appeals reasoned that IGRA and the Reorganization Act were sufficiently linked to permit piggybacking the former statute's zone of interests on top of the Reorganization Act. That is not how prudential standing works.

First, this Court has repeatedly held that prudential standing must be grounded in the precise statutory *provision* that the plaintiff invokes. While on rare occasion the Court has found two provisions within the same statute to be integrally related, the Court has never allowed a plaintiff to appropriate interests protected by one statute to sue under another. In fact, in *Air Courier Conference of America v. American Postal Workers Union*, 498 U.S. 517 (1991), this Court forbade the exact same lend/lease approach to prudential standing that the court of appeals approved here.

The same must be true here where the Reorganization Act's terms, content, purposes, and even helming agencies differ materially from IGRA. Moreover, the Reorganization Act lacks any discernible statutory standards that could be employed to evaluate or adjudicate respondent's claims. The Secretary's trust decision under the Reorganization Act simply does not turn upon the gaming or non-gaming uses of trust land. Nor would stripping the United States of trust title itself do anything to remediate respondent's asserted injuries; it would simply transfer regulatory authority over the land's use from the federal to the state government.

Second, while respondent might have been able to ground prudential standing for his claimed injuries in IGRA, the injuries he asserts had already been pressed and rejected in the earlier *MichGO* litigation. The proper conclusion to draw from that statutory reality is that, if the on-point federal statutes preclude relief, prudential standing principles do not permit a plaintiff to import those same interests into a different statutory scheme just to litigate them all over again.

Finally, respondent's "intense and obvious" interest in "polic[ing]" agency compliance with the law (Pet. App. 6a, 11a) does not establish prudential standing. This Court has held time and again that Article III standing turns on possession of the requisite legal interest, not motivation. To hold that prudential standing requires nothing more than a cognizable injury and a desire to superintend agency action, as the court of appeals did here, would simply collapse the prudential and Article III standing inquiries.

ARGUMENT

Respondent's complaint should have been dismissed for lack of jurisdiction because he is using the wrong statutory remedial scheme to enforce the wrong statute, all in an effort to wrongfully obtain relief that Congress expressly has forbidden in both the QTA and the APA.

I. THE QUIET TITLE ACT RETAINS THE UNITED STATES' SOVEREIGN IMMUNITY FROM ADMINISTRATIVE PROCEDURE ACT SUITS SEEKING TO FORCE THE UNITED STATES TO RELINQUISH TITLE TO INDIAN TRUST LANDS

Respondent's suit seeking to strip the United States of the trust title it holds to the Bradley Tract is barred because Congress expressly preserved the United States' sovereign immunity from such suits in both the QTA and the APA.

A. Congress's Waiver Of Immunity From Suits Seeking To Divest The United States Of Title To Real Property Must Be Express And Unambiguous

The starting point in determining whether respondent may challenge the United States' title to trust land is the foundational principle that, as a sovereign, the United States "'is immune from suit save as it consents to be sued.'" *Hercules Inc. v. United States*, 516 U.S. 417, 422 (1996) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). As a matter of separation of powers, only Congress can waive the United States' sovereign immunity. *See Block*, 461 U.S. at 287 (applying QTA). Accordingly, to ensure that a waiver occurs only upon congressional direction and not judicial inference, this Court requires that any waiver of sovereign immunity "'must be unequivocally expressed'"; it "'cannot be implied.'" *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (citation omitted). And any ambiguities or doubts must be "'construe[d] * * * in favor of immunity.'" *Lane v. Pena*, 518 U.S. 187, 192

(1996) (quoting *United States v. Williams*, 514 U.S. 527, 531 (1995)).

A "necessary corollary" of that rule "is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied." *Block*, 461 U.S. at 287.

B. The Quiet Title Act Statutorily Codified The United States' Full Immunity From Suits Challenging Title To Indian Trust Lands

There is no express statutory waiver of immunity for suits challenging the United States' title to Indian trust lands. Quite the opposite, Congress reconfirmed and expressly retained intact in the text of the QTA the United States' full immunity from suits seeking to challenge its title to or impair its legal interest in Indian trust lands.

1. The Retention of Full Immunity for Indian Trust Lands is Explicit in the Quiet Title Act's Text

The QTA is a "precisely drawn, detailed statute" with "carefully-crafted provisions" designed for the "protection of national public interests" embodied in the federal government's ownership, control, possession, and use of real property. *Block*, 461 U.S. at 284-285, 290. Chief among those "national public interests" (*id.* at 290) were ensuring the stability and reliability of the United States' title to land and avoiding "seriously disrupt[ing] ongoing federal programs" and obligations with respect to land in the government's control or possession, *United States v.*

Mottaz, 476 U.S. 834, 847 (1986). To protect against such harms, Congress expressly conditioned its waiver of immunity for title disputes to real property in which the United States has an interest on a prohibition of preliminary injunctive relief against the government, 28 U.S.C. § 2409a(c), and any other permanent injunctive or equitable remedies that would "disturb[] [the United States] in possession or control of any real property involved in any action under this section," *id.* § 2409a(b).

Upon those remedial terms and conditions (among others), Congress generally waived the United States' sovereign immunity from suits "to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights." 28 U.S.C. § 2409a(a).

At the same time, Congress specifically stated that its waiver of immunity in "section [2409a] does not apply to trust or restricted Indian lands" at all, 28 U.S.C. § 2409a(a). That was necessary "to prevent abridgment of 'solemn obligations' and 'specific commitments' that the Federal Government had made" in treaties, formal agreements, and elsewhere. *Mottaz*, 476 U.S. at 843 n.6; *see* H.R. Rep. No. 1559, 92d Cong., 2d Sess. 13 (1972) ("President Nixon has pledged his administration against abridging the historic relationship between the Federal Government and the Indians without the consent of the Indians."); S. Rep. No. 575, 92d Cong., 2d Sess. 4 (1971) (same).[7] Because of those distinct third-party

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[7] Gun Lake is a party to the following treaties: The Greenville Treaty of August 3, 1795 (7 Stat. 49); Treaty of Fort

interests and treaty-based concerns. Congress statutorily enshrined in the QTA its full immunity from suits challenging the United States' title to Indian trust lands. *Mottaz*, 476 U.S. at 843. Accordingly, "when the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity." *Id.*

Taken together, the "'balance, completeness, and structural integrity'" of the QTA's provisions create the type of "precisely drawn, detailed statute" that "preempts more general remedies" in litigation challenging the United States' title to or legal interest in real property. *Block*, 461 U.S. at 285 (quoting *Brown v. General Servs. Admin.*, 425 U.S. 820, 832 (1976)). "Congress intended the QTA," and only the QTA, "to provide the exclusive means by which adverse claimants could challenge the United States' title to real property," *Block*, 461 U.S. at 286, and as part of that determination, specifically walled

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Industry of July 4, 1805 (7 Stat. 87); Treaty of Detroit of November 17, 1807 (7 Stat. 105); Treaty of Chicago of August 29, 1821 (7 Stat. 288); Treaty of July 29, 1829 (Prairie Du Chien) (7 Stat. 320); Treaty of September 29, 1817 (7 Stat. 160); Treaty of October 2, 1818 (7 Stat. 185); Treaty of October 16, 1826 (7 Stat. 295); Treaty of September 19, 1827 (7 Stat. 305); Treaty of September 20, 1828 (7 Stat. 317); Treaty of October 20, 1832 (7 Stat. 378); Treaty of October 26, 1832 (7 Stat. 394); Treaty of October 27, 1832 (7 Stat. 399); Treaty of September 26, 1833 and Articles supplementary of September 27, 1833 (7 Stat. 431, 442); Treaty of September 20, 1836 (7 Stat. 513); Treaty of July 31, 1855 (11 Stat. 621).

off Indian trust lands from title-challenging litigation.

2. *The Quiet Title Act's Express Retention of Immunity Applies Regardless of Whether the Plaintiff Asserts Title*

Notwithstanding this Court's direction in *Block* and *Mottaz* confirming the preemptive exclusivity of the QTA and its trust lands bar to suit, the court of appeals held that the QTA's retention of immunity applies only when plaintiffs assert their own title to land. Pet. App. 23a-24a. When the plaintiff lacks any legal claim of his own to the land at issue, the court reasoned, the QTA and its protections for "national public interest[s]" (*Block*, 461 U.S. at 284-285) fall away, and the United States' own title to real property is subject to adjudication under any general remedial scheme a plaintiff can find. Pet. App. 23a-24a.

To be clear, the court of appeals' view means that respondent's lack of any actual, direct legal interest in the land at issue empowers him to seek the very type of displacing injunctive relief against the United States expressly withheld by the QTA and to enforce the very dispossession of title and supervisory control forbidden by the QTA against the very Indian trust lands that Congress statutorily cloaked with full sovereign immunity in the QTA. That conclusion would stand the text and purpose of the QTA, as well as basic principles of interpreting and enforcing waivers of sovereign immunity, on their heads.

First, if the premise that the QTA applies only to plaintiffs asserting their own claim to title is correct, then the only proper conclusion to draw is the

opposite of that reached by the court of appeals: the QTA must comprehensively prohibit all other suits challenging the United States' title by those, like respondent, who lack their own property interest in the land. Dictating the forum and terms on which the *United States'* title to real property is determined, and thereby ensuring that the litigation proceeds on terms compatible with the national interest and the government's operational needs, is the whole point of the QTA. The Act thus prescribes precisely the terms—such as the statute of limitations, remedial constraints, pleading requirements, and jury trial bar, 28 U.S.C. § 2409a(b)-(g)—on which the United States can be haled into court to defend its legal interest in real property. 28 U.S.C. § 2409a(a) (QTA governs when "[t]he United States may be named as a party defendant in a civil action" disputing its legal interest in land).

Those terms, and no others, are the grounds on which Congress was willing to subject the United States' legal interests in real property to suit. It thus is implausible that Congress would have intended for the remoteness of the plaintiff's legal interest, rather than the presence of the United States as a defendant protecting its title, to dictate the remedial scheme and terms on which litigation can proceed.

The court of appeals, however, did just that. It turned a perceived limitation on which plaintiffs Congress allowed to sue under the QTA into a license for those debarred plaintiffs to go obtain under any general remedial scheme—or perhaps even under the immunity-evading procedural concoctions of the pre-QTA era, *see Block*, 461 U.S. at 281—the very remedies forbidden by the QTA. And they get to sue

the United States freed from all of the litigation constraints imposed by the QTA on real property suits against the federal government. That makes no sense at all.[8]

Instead, if the court of appeals were correct that the QTA applies only to plaintiffs who themselves assert title, then settled precedent of this Court demanded that the court preclude circumvention of that deliberate congressional judgment through resort to a generalized remedial scheme like the APA. When Congress enacts a specific and carefully tailored remedial scheme—particularly one creating a remedy against the United States that did not previously exist—that scheme, with all of its limitations, "is generally regarded as exclusive." *Hinck v. United States*, 550 U.S. 501, 506 (2007) (citing *Block*, 461 U.S. at 285). In other words, the QTA, as a "precisely drawn, detailed statute," "preempts" respondent's "more general remedies."

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[8] Prior to the QTA, "[e]nterprising claimants" had attempted to skirt the sovereign immunity barrier to suit by "press[ing] the so-called 'officer's suit'" against individual federal officers under state tort law. *Block*, 461 U.S. at 281 (discussing *Malone v. Bowdoin*, 369 U.S. 643 (1962), and *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949)). But as "a device for circumventing federal sovereign immunity in land title disputes, the officer's suit ultimately did not prove to be successful." *Id.* There is no sound basis for concluding that Congress intended to revive for those plaintiffs least directly affected by the government's interest in real property the very patchwork of generalized procedural challenges displaced by the QTA. *Cf. Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 287 (1997) (refusing to extend *Ex parte Young*, 209 U.S. 123 (1908), to suits challenging a sovereign government's title to land).

Block, 461 U.S. at 285 (citing *Brown*, 425 U.S. at 834). It certainly does not point him to them, as the court of appeals held.

Second, and in any event, the court of appeals' holding overlooks that, as part of its immunity-waiving bargain in the QTA, Congress was explicit that the United States' full immunity with respect to trust lands must be preserved intact. Instead, the court's holding assumed (Pet. App. 14a-23a) that any limitations on the scope of those actions that might fall *within* the QTA's waiver of immunity—such as restricting actions to plaintiffs asserting their own title—would also qualify Congress's retention of immunity for Indian trust lands.

But that is not what the QTA says at all. Because the QTA was enacted as a single statutory section, *see* Pub. L. No. 92-562, § 3(a), 86 Stat. 1176 (Oct. 25, 1972), Congress's direction that "[t]his section" does not apply to Indian trust lands carved such lands categorically out of the QTA's terms and expressly asserted and reconfirmed statutorily the United States' full sovereign immunity "from suit by third parties challenging the United States' title to land held in trust for Indians." *Mottaz*, 476 U.S. at 842, 843. The provision contains no qualifications or limitations on the retention of immunity, either based on the nature of the plaintiff's claim or otherwise.

Thus, nothing in the text of the QTA supports limiting that expressly retained immunity to a subset of challenges to trust title, or qualifying its operation based on how diluted the plaintiff's connection to the land is. That is because the retention of immunity is all about protecting the United States' legal interest

in trust lands, which does not vary based on the remoteness of the plaintiff's legal interest. And the QTA must "be strictly construed, in terms of its scope, in favor of th[at] sovereign" interest's protection. *Department of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 261 (1999).

Furthermore, because waivers of sovereign immunity are constitutionally committed to the Legislative Branch, the judicial presumption that Congress said what it meant and meant what it said in its unqualified retention of immunity should apply with constitutionally redoubled force here. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there."); *United States Dep't of Energy v. Ohio*, 503 U.S. 607, 615 (1992) (waiver of immunity may not be "enlarge[d] * * * beyond what the language requires") (internal quotations and citations omitted).

Third, there is no logical reason that Congress would have wanted to turn its comprehensive sovereign-immunity protection for trust lands on and off based on how remote the individual plaintiff's connection to the land is. Respondent has never identified any reason why Congress would have chosen to permit suits by plaintiffs with *no* legal claim to or interest in the trust lands to go forward and to obtain the drastic injunctive relief of forcing the United States to surrender its legal title to and superintending control over the land, while those asserting actual title to the lands would be flatly debarred from suing at all.

Congress, after all, adopted the Indian trust lands exception to protect against any "abridg[ment] [of] the historic relationship between the Federal Government and the Indians without the consent of the Indians" and to prevent the violation of "written treaties" and "informal and formal agreements." H.R. Rep. No. 1559, *supra*, at 13 (quoting Sept. 29, 1971 letter of M. Melich, Solicitor, Department of the Interior); *see* S. Rep. No. 575, *supra*, at 4 (same). In Congress's judgment, "[g]reat nations, like great [people], should keep their word." *CIA v. Sims*, 471 U.S. 159, 175 n.20 (1985) (quoting *FPC v. Tuscarora Indian Nation*, 362 U.S. 99, 142 (1960) (Black, J., dissenting)).

That purpose has everything to do with preserving the stability and certainty of the *United States*' trust title, and nothing at all to do with *why* the plaintiff seeks to strip the United States of title, whether to enforce its own title claim or just to "police" alleged governmental wrongdoing (Pet. App. 6a). Either way, litigation aimed at forcing the United States to relinquish title or issuing an injunction that interferes with the United States' title to or superintending control of land "pose[s] precisely the threat to ongoing federal" or federally protected "activities on the property that the Quiet Title Act was intended to avoid." *Mottaz*, 476 U.S. at 847; *cf. Minnesota v. United States*, 305 U.S. 382, 386-389 & n.1 (1939) (discussing the significance of

the United States' legal interest in lands held in trust).[9]

Fourth, this Court has never given Congress's express retention of immunity for Indian trust lands in the QTA the cramped reading adopted by the court of appeals. In *Mottaz*, *supra*, individuals claiming title to Indian allotments sold by the Secretary to the United States Forest Service filed suit seeking to void the sale, 476 U.S. at 836-838. The nature of the plaintiffs' interest, however, played no part in this Court's analysis. What was critical was that the *United States'* title to the lands was being challenged. This Court was explicit and unequivocal that the trust lands provision "retain[s] the United States' immunity from suit by third parties challenging the *United States' title* to land held in trust for Indians," and that "when *the United States claims an interest* in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity." *Id.* at 842-843 (emphases added).

Fifth, even outside the trust lands context, this Court has emphasized that the QTA focuses on ensuring the stability of the United States' title to and legal interest in lands, not on the nature of the plaintiff's legal interest. In *Block*, North Dakota

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[9] Further evidence that the QTA's operation is keyed to the United States' interest, rather than the plaintiff's interest, is found in 28 U.S.C. § 2409a(e), which provides that jurisdiction under the QTA "cease[s]" if "the United States disclaims all interest in the real property or interest therein adverse to the plaintiff," and that disclaimer is confirmed by court order.

sought to quiet title to a riverbed on federal land over which the United States claimed ownership. 461 U.S. at 277-278. North Dakota sought to avoid the QTA's statute of limitations by bringing an "officer's suit" against "the federal officials charged with supervision of the disputed area," rather than a traditional quiet title action. *Id.* at 281. This Court held, however, that the QTA's provisions did not depend on the nature of the plaintiff's cause of action because "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge *the United States' title* to real property." *Id.* at 286 (emphasis added).

Presumably that is why Congress wrote Section 2409a(a) to cover all claims seeking "to adjudicate *a* disputed title to real property in which the United States claims an interest," without reference to whether the claim to title rests in the plaintiff, the United States, or both. 28 U.S.C. § 2409a(a) (emphasis added). And that makes sense because any challenges to title held by the United States, including claims like respondent's, necessarily seek to quiet title in someone other than the United States. The challenge to and quieting of title held by the United States is what triggers the QTA's sovereign-immunity protections.

The court of appeals' assumption, moreover, that Congress mapped onto the QTA some rigid conception of quiet-title plaintiffs overlooks "the wide differences in State statutory and decisional law" on quiet title actions at the time of enactment, which renders the court of appeals' dispositive reliance on common-law quiet-title actions "impractical." H.R. Rep. No. 1559, *supra*, at 9-10 (Oct. 6, 1971 letter of

Attorney General); *see* S. Rep. No. 575, *supra*, at 6 (same). For example, as even the court of appeals acknowledged, although the traditional common-law quiet title action could only be brought by "the holder of legal or equitable title to land," Pet. App. 15a, some (but not all) States had, by 1972, expanded the actions to allow those not in possession to sue, *id.* *See* John Montague Steadman, *"Forgive U.S. Its Trespasses?": Land Title Disputes With the Sovereign—Present Remedies and Prospective Reform*, 1972 Duke L. J. 15, 48-49 & n.152 (1972) (noting "[t]he sharp variety in requirements from state to state" for bringing a quiet title action).

The QTA, "properly understood and properly applied by the courts," thus was designed to "produce a more stable and predictable system of immunity from suit than the [prior] doctrine of sovereign immunity [could] ever attain—because it will be a system directly and honestly based upon *relevant governmental factors* rather than upon a medieval concept whose real vitality is long since gone." H.R. Rep. No. 1656, 94th Cong., 2d Sess. 26 (1976) (May 10, 1976 letter of Assistant Attorney Gen. A. Scalia) (emphasis added); *see* S. Rep. No. 996, 94th Cong., 2d Sess. 25 (1976) (same). Here, barring suits by some plaintiffs who threaten to disrupt United States title to Indian lands but not barring the exact same suits when brought by less-interested plaintiffs, would fail to provide the required consistent treatment to the "relevant governmental factor" (*id.*) underlying Indian lands immunity.

In holding that the QTA only applies to cases where the plaintiff seeks to quiet its own title, the court of appeals stressed (Pet. App. 18a) that

subsection (b) of the QTA prohibits courts from ordering any relief that would "disturb[]" the United States' "possession or control of any real property," and instead requires that the government be permitted the option of making "payment to the person determined to be entitled thereto." 28 U.S.C. § 2409a(b). But that hurts rather than helps respondent because there is no reason why Congress would have wanted the existence of that important protection of the United States' legal interests to disappear simply because the plaintiff has *no* direct interest in the real property at issue. What should be dispositive is the challenge to United States' title.[10]

3. The Administrative Procedure Act's General Provisions Do Not Supplant the Quiet Title Act's Barrier to Relief

Having (wrongly) concluded that the QTA's express statutory retention of sovereign immunity for Indian trust lands was confined to lawsuits asserting the plaintiff's own title to those lands, the court of appeals grounded authority for respondent's action in the APA's general waiver of the United States' sovereign immunity. *See* Pet. App. 20a-24a. Section 702 of the APA provides that "[t]he United States

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[10] Subsection (d) of the QTA requires plaintiffs to identify the "nature of the right, title, or interest which the plaintiff claims in the real property." 28 U.S.C. § 2409a(d). That, however, plainly presupposes that "rights" and "interests" asserted by plaintiffs other than title fall within the scope of the QTA. More importantly, that requirement simply to identify the claimed legal interest would presumably encompass situations where the plaintiff asserts legal injury arising from the fact that title should be quieted in a third party.

may be named as a defendant" in a suit for declaratory or injunctive relief arising from the action of a federal government agency. 5 U.S.C. § 702.

The court's discernment of a waiver of immunity in the APA for suits challenging the United States' trust title to real property was mistaken in three respects.

First, by its terms, Section 702 does not "affect[] other limitations on judicial review" and, in particular, it does not "confer[] authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." 5 U.S.C. § 702. This Court, moreover, has already specifically held that "[t]he QTA is such an 'other statute,'" within the meaning of Section 702. *Block*, 461 U.S. at 286 n.22. In *Block*, the plaintiff specifically argued that the APA's waiver of immunity in Section 702 overrode the QTA's barrier to a non-quiet-title suit for relief. *Id.* This Court "rejecte[d] [that] claim" because, "if a suit is untimely under the QTA, the QTA expressly 'forbids the relief which would be sought under § 702." *Id.*

Likewise here, the QTA's express reservation of immunity for Indian trust lands, as well as its flat prohibitions on preliminary injunctive relief and permanent injunctive remedial orders depriving the United States of "possession or control of" real property, 28 U.S.C. § 2409a(a), (b) & (c), expressly forbid the very same title-stripping injunctive and declaratory relief that respondent is attempting to obtain under the APA. *See Block*, 461 U.S. at 278 (noting State's claim for both injunctive and declaratory relief). Opening up the United States'

trust title to equitable APA actions, moreover, would also end-run the QTA's limitations period since injunctive relief aimed at an ongoing (and thus continually accruing) harm might be brought outside the 12-year period set by Congress for affording repose to federally held lands, *see* 28 U.S.C. § 2409a(g). *Cf. Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 282 (1997) (noting special sovereignty concerns caused by directing injunctive relief at government officials in cases concerning government lands, because such relief would "bar the State's principal officers from exercising their governmental powers and authority over the disputed lands").

Indeed, in *Block*, this Court was explicit that it would not "allow claimants to try the Federal Government's title to land" outside the QTA framework in part because, if it did, "the Indian lands exception to the QTA would be rendered nugatory." 461 U.S. at 285. Thus, both the plain text of Section 702 and *Block* proscribe respondent's effort to obtain under the APA precisely what Congress forbade all plaintiffs under the QTA.

Second, the court of appeals' assumption that confining the QTA waiver of immunity to plaintiffs asserting their own title somehow narrows the express statutory retention of immunity for Indian trust lands and takes it outside of the APA's "expressly or impliedly" proviso is wrong. The court's holding seems to assume that, for plaintiffs who are excluded from seeking relief under the QTA because they do not claim title or a sufficient legal interest, there existed nothing but the backdrop of silently implied immunity that the APA supplanted. Not so. Congress was anything but silent with respect to

preserving the United States' immunity from suits challenging title to Indian trust lands. Congress was quite explicit in the QTA that the United States cannot be made a party defendant to dispute its title to trust or restricted Indian lands. 28 U.S.C. § 2409a(a). The QTA thus is a full-throated, statutory codification of *unqualified* sovereign immunity from suits challenging the United States' title to or legal interest in such land, and a redoubled prohibition on obtaining injunctive relief or remedial orders aimed at dispossessing the United States of trust title. The APA does not upend all of that.

The plain terms of the QTA thus fall squarely within Section 702's limitation on the APA waiver of immunity because, in the course of granting consent to suit, the QTA expressly and (certainly) impliedly forbade court review and injunctive relief stripping the United States of trust title to and superintending control over Indian lands.

And even if the QTA omits plaintiffs who lack a legal claim to the real property at issue, that would mean the opposite of what the court of appeals concluded. Under *Brown* and *Hinck*, it means that claims like respondent's remain foreclosed because the QTA, as the narrower, "better fitted statute," "'pre-empts more general remedies.'" *EC Term of Years Trust v. United States*, 550 U.S. 429, 433, 434 (2007) (quoting *Brown*, 425 U.S. at 834). There certainly is no sound basis for concluding that those to whom Congress has denied relief altogether under the QTA can turn around and obtain an *even broader* remedy—one that is expressly foreclosed by the context-specific QTA statute—by invoking a general remedial scheme like the APA. "[R]esort to a general

remedy" to obtain the very relief expressly foreclosed in the narrower, specific remedial statute is forbidden. *Id.* at 434.

Third, Congress meant its "expressly or impliedly" limitation on the APA waiver of immunity to cover situations precisely like this. When choosing between two competing drafts of Section 702, Congress opted for the far broader "expressly or impliedly forbids the relief" language over an alternative that would have preserved immunity only when "any other statute * * * grant[ing] consent to suit [for money damages] forbids the relief which is sought," S. 800, 94th Cong., 2d Sess. 2 (1976) (as reported by S. Comm. on the Judiciary, Feb. 21, 1975).

That alternative ran the risk of unduly limiting the APA's retention of immunity "in such a fashion as to raise serious questions concerning the scope of the new reviewability which would be created." H.R. Rep. No. 1656, *supra*, at 27 (May 10, 1976 letter of Assistant Attorney Gen. A. Scalia); *see* S. Rep. No. 996, *supra*, at 26 (same). Specifically, because statutes predating the APA's immunity waiver "ha[d] been enacted against the backdrop of sovereign immunity," it "would [have been] extremely rare" for those statutes to have *expressly* barred relief on immunity grounds. H.R. Rep. No. 1656, *supra*, at 27-28; *see* S. Rep. No. 996, *supra*, at 26-27 (same). Preserving immunity when the relief sought was "impliedly" forbidden by another statute thus ensured that, "where statutory remedies already exist[ed], these remedies will be exclusive." H.R.

Rep. No. 1656, *supra*, at 27-28; *see* S. Rep. No. 996, *supra*, at 27 (same).[11]

As this Court recognized in *Block*, 461 U.S. at 286 n.22, the QTA is the archetypal statute falling within Section 702's "expressly or impliedly" bar to review. The QTA is a statute by which "Congress has consented to suit and the remedy provided is intended to be the *exclusive remedy* * * * with respect to a particular subject matter." H.R. Rep. No. 1656, *supra*, at 12-13 (emphasis added); *see* S. Rep. No. 996, *supra*, at 11-12 (same). Indeed, this Court has long acknowledged that "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge" the United States' trust title to Indian lands. *Block*, 461 U.S. at 286; *accord Mottaz*, 476 U.S. at 841, 843 (applying trust lands exception).

The court of appeals' cramped reading of the trust lands provision (Pet. App. 23a-24a) reads "impliedly" right out of Section 702 and ignores that, under *Brown*, *Hinck*, and *EC Term of Years*, any specific

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[11] Because the text of Section 2409a(a) establishes the government's immunity from suit in this case, it is not "strictly necessary to confirm [this] reading of the statutory text by consulting the legislative history." *Samantar v. Yousuf*, 130 S. Ct. 2278, 2287 n.9 (2010). Nevertheless, even in the sovereign immunity context, statutory construction preserving immunity can sometimes be reinforced by and "'benefit[] from [the] additional information'" provided by legislative history "'rather than ignoring it,'" *id.* (quoting *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 611-612 (1991)), even though legislative history alone would never support a waiver of immunity ungrounded in clear and explicit statutory text, *see United States v. Nordic Village, Inc.*, 503 U.S. 30, 37 (1992).

limitations on actions under the QTA (such as requiring plaintiffs to assert their own title to the land) must be understood as implied prohibitions on relief for those excluded claimants, not licenses for them to obtain elsewhere what the "specific remedy" expressly proscribes. *Hinck*, 550 U.S. at 506. *Cf. Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991) ("A specific provision controls over one of more general application.").

Fourth, there is no sound reason to conclude that, when Congress amended the APA to provide for a general waiver of the United States' immunity in suits challenging agency action, it meant to anomalously unravel the QTA's comprehensive prohibition on challenges to the United States' trust title solely for plaintiffs lacking any legal interests in those lands, while continuing to debar relief for those with the most direct claims and injuries. Whatever the individual plaintiff's impetus for bringing suit, the title-stripping relief sought would "pose precisely the threat to ongoing federal" or federally protected "activities on the property that the Quiet Title Act was intended to avoid." *Mottaz*, 476 U.S. at 847.

Beyond that, the limitation of QTA actions to plaintiffs seeking to quiet title would presumably reflect a congressional recognition that those plaintiffs as a class are most directly injured by the federal government's competing claim and suffer the greatest hardship if sovereign immunity bars their suits. *See* H.R. Rep. No. 1656, *supra*, at 8; S. Rep. No. 996, *supra*, at 7-8. Opening the United States up to suit by every third party who might wish to challenge the United States' legal interest even though lacking a competing interest in the property

of its own, by contrast, would subject the United States' title to a broad swath of litigation and perpetual instability. It is unlikely that Congress considered such second-hand interests to present sufficient hardship to warrant the countervailing burden litigation would impose on the stability and certainty of United States title, as well as on third parties who do have legal interests in the land (like Gun Lake) and who do not object to the United States' interest or title.

The court of appeals cast those anomalies and considerations aside, reasoning that the Congress that enacted the QTA in 1972 "did not have to concern itself" with suits by plaintiffs lacking title because, prior to the APA, "there was no general waiver of the government's sovereign immunity for non-monetary actions." Pet. App. 21a. But that rationale is precisely why Congress built the "expressly or impliedly" limitation into the APA: to ensure that the APA's general waiver did not unravel reservations of immunity that were "enacted against the backdrop of sovereign immunity." H.R. Rep. No. 1656, *supra*, at 27; *see* S. Rep. No. 996, *supra*, at 27-28 (same). Congress did everything it logically could have been expected to do in 1972 to ensure the wholesale preservation of sovereign immunity over title to trust lands and to wall the United States' title in such real property off from the rest of the QTA waiver. Thus, whether or not it would have been "far-fetched to attribute an intention to the *1972 Congress*" to have addressed injunctive actions like respondent's, Pet. App. 21a (emphasis added), it was the precise and conscious aim of the *1976 Congress* that enacted the "expressly or impliedly" proviso in

the APA to look back and preserve intact such comprehensive reservations of immunity as the QTA's trust lands provision.

Finally, this Court should not interpret the QTA "so narrowly as to defeat its obvious intent," *United States v. Braverman*, 373 U.S. 405, 408 (1963), of preventing disruption and uncertainty from pervading the trust status of Indian lands. Permitting suit here would defeat the very economic-development and community-building goals of the trust process.

At worst, whether Congress intended to allow less-interested plaintiffs to obtain under the APA what aggrieved title holders are flatly barred from obtaining under the QTA is a textually ambiguous question, and the court's authorization of respondent to obtain the very relief that the QTA textually prohibits "founders on the principle that a waiver of sovereign immunity must be strictly construed in favor of the sovereign." *Orff v. United States*, 545 U.S. 596, 601-602 (2005).

II. RESPONDENT LACKS PRUDENTIAL STANDING TO POLICE THE FEDERAL GOVERNMENT'S COMPLIANCE WITH THE LAW BECAUSE HIS ALLEGED INJURIES ARE DISCONNECTED FROM THE STATUTE HE SEEKS TO ENFORCE

The requirement that a plaintiff have standing to sue in federal court encompasses both constitutional and prudential limitations on the exercise of federal jurisdiction. The constitutional limitations flow from Article III's restriction of federal jurisdiction to actual "'case[s]' or 'controvers[ies].'" *Bennett v. Spear*, 520

U.S. 154, 162 (1997) (citation omitted). The prudential limitations reflect "'judicially self-imposed'" restrictions that counsel against the exercise of federal jurisdiction, even if Article III standing requirements are satisfied. *Id*; *see Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99-100 (1979) (a plaintiff that has Article III standing "may still lack standing under the prudential principles by which" federal courts decline to exercise jurisdiction).

"Like their constitutional counterparts," prudential limitations on standing are rooted in concerns about the role of courts and respect for the separation of powers between and among the branches of the national government. *Bennett*, 520 U.S. at 162. Prudential standing doctrine enforces, as a "matter[] of judicial self-governance," the principle that federal courts should refrain from deciding questions that "other governmental institutions may be more competent to address." *Warth v. Seldin*, 422 U.S. 490, 500 (1975). Strict enforcement of prudential standing requirements thus respects the legislature's statutory boundaries by ensuring that the "statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief." *Id.*

The court of appeals here cast aside the prudential standing doctrine's protective and limiting functions, holding that respondent can use the Reorganization Act to advance interests that are protected not by that Act, but by different statutes respondent did not sue under, just because the court

deemed him an appropriate plaintiff to "police" the government's compliance with law. That was error.

A. Respondent Falls Outside The Reorganization Act's Zone Of Interests

Since this Court's decision in *Association of Data Processing Services, Inc. v. Camp*, 397 U.S. 150 (1970), one core requirement of prudential standing has stood fast: the injury that the plaintiff seeks to remediate "must arguably fall within the zone of interests protected or regulated by the statutory provision invoked in the suit." *Bennett*, 520 U.S. at 162; *see National Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 492 (1998) ("*NCUA*") ("[T]he plaintiff's interests" must be "among" the "interests 'arguably * * * to be protected' by the statutory provision at issue."); *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 886 (1990) ("[T]he relevant statute" for zone-of-interests purposes "is the statute whose violation is the gravamen of the complaint[.]"). By the same token, prudential standing does not exist where the plaintiff's asserted interests are "inconsistent with the purposes implicit in the statute." *Thompson v. North American Stainless, LP*, 131 S. Ct. 863, 870 (2011).

That requirement of concrete linkage between the plaintiff's interests and the statute's aims is indispensable to ensure that the broad cause of action licensed by the APA does not devolve into a general grant of citizen standing to enforce governmental compliance with the law for anyone with an Article III injury. Prudential standing's zone-of-interests test, in other words, prevents the "disruption" of daily operations of the federal government that could result if "every party adversely affected by agency

action [was allowed] to seek judicial review" on the ground that it exceeded the agency's authority. *Clarke v. Securities Indus. Ass'n*, 479 U.S. 388, 397 (1987).

"The essential inquiry" under the prudential standing doctrine thus "is whether Congress 'intended for a particular class of plaintiffs to be relied upon to challenge agency disregard of the law.'" *Clarke*, 479 U.S. at 399 (quoting *Block v. Community Nutrition Inst.*, 467 U.S. 340, 347 (1984)) (internal formatting omitted). In granting respondent prudential standing, however, the court of appeals erased that elemental component.

1. Respondent's Interests Are Divorced from the Reorganization Act's Terms and Operation

In determining whether a plaintiff is "arguably within the zone of interests protected by a statute," this Court "first discern[s]" the statute's interests and then "inquire[s] whether the plaintiff's interests affected by the agency action in question are among them." *NCUA*, 522 U.S. at 492 (internal citations omitted). Respondent fails that test. His purported interest in the aesthetic impact of gaming in an abandoned industrial area bordering a highway and already zoned for light industrial usage has no anchor in the Reorganization Act at all, let alone in the land-into-trust "statutory provision at issue[.]" *Id.*

To begin with, the "overriding purpose" of the Reorganization Act is to "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically," *Morton v. Mancari*, 417 U.S. 535,

542 (1974), and to encourage tribes to "revitalize their self-government" and take control of their "business and economic affairs," *Mescalero*, 411 U.S. at 151. Those Reorganization Act goals "reflected a new policy of the Federal Government and aimed to put a halt to the loss of tribal lands through allotment," which had been the prevailing federal policy for over a century. *Id.*; *see County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251, 255 (1992) ("The policy of allotment came to an abrupt end in 1934 with passage of the Indian Reorganization Act," which "[r]eturn[ed] to the principles of tribal self-determination and self-governance.").

Moreover, the announced purpose of the particular provision under which respondent has sued—the land-into-trust provision—is to "authorize[]" the Secretary of the Interior "to acquire" land and hold it in trust "for the purpose of providing land for Indians." 25 U.S.C. § 465. That trust authority "promotes the policy of protecting and increasing" Indian lands and "is the capstone" of the land-related provisions of the [Reorganization Act]." Felix S. Cohen, *Handbook of Federal Indian Law* § 15.07[1][a], at 1009-1010 (2005 ed.).

Respondent's interests have nothing to do with Section 465's purposes or the zone of interests it superintends. He is not an Indian or tribal official seeking land, and he does not even colorably claim an interest in advancing tribal development or self-governance. To the contrary, his avowed aim of taking land out of the very trust status that Congress deemed critical to promoting tribal economic development and self-governance demonstrates

adversity to, not consistency between, his interests and those served by Section 465. Interests that are "inconsistent" with statutory purposes and "are more likely to frustrate than to further statutory objectives" do not support prudential standing. *Clarke*, 479 U.S. at 397 n.12, 399.

Nor can respondent claim prudential standing on the ground that the trust decision has a regulatory impact on him. The Secretary's trust decision does not regulate him or the use of his own land, neither does the trust decision displace any preexisting authority he might have had over his own land or rights he enjoyed.

Respondent, after all, is not a state or local government whose own regulatory authority over the trust lands is cut off or circumscribed by the Secretary's trust decision. Such governmental entities are vested with prudential standing to challenge trust determinations. *See Connecticut v. United States Dep't of the Interior*, 228 F.3d 82, 85-86 (2d Cir. 2000) ("When the Secretary takes land into trust on behalf of a tribe pursuant to the IRA, several important consequences [for state and local governments] follow. Land held in trust is generally not subject to (1) state or local taxation; (2) local zoning and regulatory requirements; or (3) state criminal and civil jurisdiction[.]") (internal citations omitted); *South Dakota v. United States Dep't of the Interior*, No. 11-1745, 2012 WL 75292, at *3 (8th Cir. Jan. 11, 2012) (Because the trust decision will cause the County to "lose [amounts] in annual property taxes," and deprive[] [it] of additional tax revenues,"

"the State has a direct and tangible economic interest in the agency's decision.").[12]

As entities directly regulated or restricted by Section 465's land-into-trust decisions, affected state and local governments have prudential standing because their interest in ensuring that the agency does not entrench upon their preexisting regulatory authority over lands within their jurisdiction coincides with and is reflected in the statutory provisions confining the agency to the regulatory limits charted by Congress. There thus is the "unmistakable link" between the state and local governments' interests and the objectives of the statute sued under that prudential standing requires. *NCUA*, 522 U.S. at 493 n.6.

By contrast, no consequences at all befall respondent as a result of the Secretary's trust

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[12] The regulations implementing Section 465 underscore the linkage between trust decisions and the interests of affected state and local governments. The regulations require the Secretary to afford only affected state and local governments early notice of a request from a tribe to place land into trust and to provide them an opportunity to comment on the request even before the Secretary makes the decision whether to place the land into trust. *See* 25 C.F.R. § 151.10 ("Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired. * * * The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impact on regulatory jurisdiction, real property taxes and special assessments."); *see also id.* § 151.11. In addition, affected state and local governments can seek judicial review of a final agency decision to place land into trust under 25 C.F.R. § 151.12(b).

determination itself. He is not a statutory beneficiary of the trust process, nor do his property or personal interests fall within the regulatory span of the trust decision. The prudential standing doctrine "denies a right of review" when, as here, the plaintiff's interests "are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Clarke*, 479 U.S. at 399.[13]

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[13] Much different are cases in which this Court has held that competitors of entities regulated by statutes had prudential standing to challenge agency action authorizing the entities to pursue activities alleged to be in excess of what the statute allowed. *See Data Processing*, 397 U.S. at 155 (association of data processing businesses had prudential standing to challenge agency action authorizing national banks to engage in competing data processing activities); *Investment Company Institute v. Camp*, 401 U.S. 617 (1971) (association of investment companies had prudential standing to challenge agency action authorizing national banks to operate competing investment funds); *Clarke*, 479 U.S. at 403 (association of securities brokerage firms had prudential standing to challenge agency action authorizing national banks to provide competing brokerage services); *NCUA*, 522 U.S. at 493 (banks had prudential standing to challenge agency action allowing formation of credit unions that competed with banks for depositors). In each of those cases, Congress intended the relevant statutes to legislate against the very competition that plaintiffs sought to reign in; thus, the plaintiffs' competition-limiting interests coincided with the statutory objectives. By contrast, there is no indication that Congress intended for the Reorganization Act's land-into-trust provision to remediate private individuals' aesthetic objections to gaming.

2. *The Reorganization Act Does Not Address, Regulate, or Remediate Respondent's Claimed Injuries*

Respondent's goal of combating gaming is completely ungrounded in the Secretary's trust decision under Section 465 of the Reorganization Act. The Secretary's decision to put land into trust does not turn on any particular use of the land, gaming or otherwise. *See* 25 C.F.R. § 151.3. Instead, the trust decision turns on the Secretary's determination that the trust placement will promote the Reorganization Act's aims of "facilitat[ing] tribal self-determination, economic development, or Indian housing." *Id.*

While the Secretary noted in this case that the land would be eligible for gaming, 70 Fed. Reg. 25,596 (May 12, 2005), that was simply to kill two birds with one stone by making the separate IGRA gaming determination also sought by Gun Lake at the same time as the trust decision. *See* Admin. Rec. 0001514-0001518 (indicating that Secretary's decision to place land into trust is separate from determination that land is eligible for gaming). The Secretary's independent trust decision did not turn on that consideration, however, nor was it conditioned in any way on Gun Lake's subsequent use or non-use of the land for gaming. Indeed, only approximately 25% of the land placed into trust is used for the gaming facility, C.A. App. 540, and respondent asserts no legal injury or objection to how the balance of the land held in trust is being used.

The Secretary's decision to place the land in trust itself thus has no impact on respondent or his asserted interests. The fact that title to the land was conveyed to the United States, and that the United

States has superintendence over the land, does not constrain his use of his own property, impede the exercise of any of his personal rights, or occasion the aesthetic injuries of which he complains. Nor has he articulated any injury associated with 75% of the land held in trust or the other governmental, cultural, and economic uses of the trust land.

Rather, respondent's gaming and aesthetic objections are not to the Secretary's trust decision itself, but rather to *one particular usage* of a small portion of the land by Gun Lake *after* the land was placed into trust. But scouring the Reorganization Act, let alone Section 465, from top to bottom would uncover nothing that polices how land is used once placed into trust. The Reorganization Act provides absolutely no mandate to assess or standards for evaluating the propriety of gaming, gaming impacts, or the environmental concerns that respondent raises. If the prudential standing doctrine's zone-of-interests requirement means anything, it means that a plaintiff cannot use a statute to try and remediate asserted interests that the statute itself does not even mention, let alone establish relevant criteria for their protection or enforcement.

Instead, Congress has tasked different statutes, like IGRA and the National Environmental Policy Act, with addressing precisely the concerns that respondent raises. *See* 25 U.S.C. § 2719(b)(1)(A) (IGRA requires the Secretary, when considering whether to approve a tribal gaming operation, to take into account the effects of the proposed operation on the "surrounding community"); *Citizens Exposing Truth About Casinos v. Kempthorne*, 492 F.3d 460, 464-465 (D.C. Cir. 2007) (community group had

prudential standing to sue under IGRA provision requiring Secretary of Interior to consider whether operation of a casino on land placed into trust would "'not be detrimental to the surrounding community'") (citation omitted); *Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d 852, 855, 860 (D.C. Cir. 2006) (taxpayer group, including persons living adjacent to a proposed Indian gaming site, had prudential standing to sue under National Environmental Policy Act provision requiring Secretary of Interior to consider environmental impact of decision to place land into trust for tribe).

But respondent chose not to sue under those statutes. And for good reason. The community group that respondent supported in the *MichGO* litigation already had brought National Environmental Policy Act and IGRA challenges to the Secretary's decision to place the Bradley Tract into trust, and those claims were rejected by both the district court and the court of appeals. *MichGO*, 525 F.3d at 28-33. Neither the APA nor prudential standing principles permits plaintiffs to treat the Reorganization Act like an open vessel into which any and all citizen objections under any laws can be poured and litigated—or, actually, relitigated a second time.

The court of appeals deemed the Reorganization Act and IGRA to be sufficiently "linked" (Pet. App. 8a) to bypass the settled prudential standing rule that the plaintiff's interests must coincide with "the statutory provision * * * invoked in the suit," *Bennett*, 520 U.S. at 162. *See* Pet. App. 8a. That was wrong.

First, the Court has only employed an "integral relationship" bridge to support prudential standing when the two statutory provisions are *within the*

same statute. *Air Courier Conference*, 498 U.S. at 529-530.

Indeed, the court of appeals' invocation of *Air Courier Conference* (Pet. App. 9a) to support its prudential-standing merger of IGRA with the Reorganization Act is hard to understand because that case expressly precludes the very sort of statutory "leapfrog[ging]" that occurred here—that is, importing interests under one statute to support prudential standing under another. 498 U.S. at 530. Much like respondent, the plaintiffs in *Air Courier Conference* argued that they had prudential standing to sue under the Postal Express Statutes because those laws were reenacted as part of another law, the Postal Reorganization Act, the zone of interests of which the plaintiffs fell within. *Id.* at 528-529.

This Court flatly rejected that argument, warning that "[t]o adopt" the plaintiffs' argument would make the Postal Reorganization Act the "'relevant statute'" for purposes of the zone-of-interests inquiry, even though the plaintiffs did not sue under that law and even though it was "united" with the Postal Express Statutes "only by the fact that [both laws] deal with the Postal Service." *Air Courier Conference*, 498 U.S. at 529-530. "It would be a substantial extension" of prudential standing law, the Court explained, to "defin[e] the 'relevant statute'" through reference to an entirely different statute from the statute on which a plaintiff sues. *Id.* at 530. To do so "could deprive the zone-of-interests test of virtually all meaning." *Id.*

So too here. "[T]he fact that [the Reorganization Act and IGRA both] deal with" Indians and their land, *Air Courier Conference*, 498 U.S. at 529-530,

cannot make up for the substantial gap between the injuries respondent alleges and the terms, purposes, and remedial reach of the Reorganization Act. *Cf. Bennett*, 520 U.S. at 175-176 (plaintiff cannot rely on "overall purpose" of a law to establish prudential standing; focus is on the "particular provision of law upon which the plaintiff relies"). Particularly here, where the leapfrogging follows a failed challenge under the statutes that do address respondent's concerns, it would turn the zone-of-interests test inside out if it were used to make one statute a proper vehicle for refighting already-rejected claims governed by an entirely different statutory scheme. That would transform prudential standing from a rule designed to respect congressional limitations into a mechanism for hybridizing laws that Congress chose to enact as distinct statutory schemes.

Second, the court of appeals' newly minted, inter-statute "linkage" test for prudential standing is standardless and inadministrable. It offers no workable rule for determining when statutory lines should or should not be judicially blurred for prudential standing purposes. Nor could it. Here, the relevant congressional judgment is the legislative determination to house the rules for gaming in a *different* statute with *different* rules and *different* procedures helmed in part by a *different* agency (the National Indian Gaming Commission). 25 U.SC. § 2702. At bottom, the court of appeals erred by attempting to make the same that which Congress had made different.

Third, yet another problem with trying to conglomerate statutes to establish prudential standing is that it creates a gap between the injuries

alleged and the ability of judicial enforcement to redress those injuries. The requirement that plaintiffs demonstrate that judicial relief will redress the injuries asserted is a core requirement of Article III standing. *See, e.g., Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976). Prudential standing requirements must reinforce that judicial redressability requirement, just as they closely enforce Article III's injury requirement.

When the plaintiff's injury and the interests served by the statute sued under coincide, the remedial sufficiency of the law tends to follow from the statute's zone of interests. The two go hand in hand. For example, a plaintiff would have prudential standing to bring an APA challenge for alleged violations of IGRA in connection with agency approval of a gaming license because, if successful, the plaintiff's claim would redress injuries from gaming by preventing or halting the gaming operation.

Not so when plaintiffs are permitted to hopscotch across different statutes to establish prudential standing. The decision to place land into trust under the Reorganization Act does not license (or prohibit) gaming. Gun Lake's authority to conduct gaming arose from separate decisions by the federal government, including the National Indian Gaming Commission under IGRA, and the state government through its adoption of a gaming compact with Gun Lake. Respondent challenges neither of those decisions.

Furthermore, stripping the United States of its trust title by taking the land out of trust is a blunderbuss response to gaming and aesthetic

injuries that Congress never intended or designed the Reorganization Act to redress. To begin with, taking the land out of trust would not independently determine whether gaming could go forward. It would say nothing about whether a private, non-tribal company could continue to operate this profitable casino that is providing critically needed economic rejuvenation in Michigan. That, as well as the ability of Gun Lake to obtain state authorization to game off of trust lands, would be dictated entirely by state law, not the Reorganization Act or any federal law.

This Court has long held, however, that standing cannot be established when relief depends critically on the actions of third parties. *See Steel Co. v. Citizens For A Better Env't*, 523 U.S. 83, 106 n.7 (1998); *Simon*, 426 U.S. at 41-42. Prudential standing to enforce a federal law, likewise, should exist only when the remedy is provided directly by the statute being invoked. That is because, as a federal law, redressability should exist uniformly across the Nation rather than turn on and off based on the vagaries of state law.

Fourth, de-trusting the land and surrendering the United States' title far overshoots any alleged environmental or gaming injuries, especially given that nearly three-quarters of the land at issue is not used for the casino. Tellingly, the National Environmental Policy Act allows tribes and the government to address that statute's environmental concerns through more targeted and tailored adjustments in casino operations. It is not the all-or-nothing decision that using the Reorganization Act's trust authority would inflexibly impose.

The overreaching and heavy-handed effects of taking land out of trust, its repercussions for the many unchallenged tribal development and governmental operations on the majority of the trust land, its wooden inflexibility in resolving environmental objections, and the harm it would inflict on surrounding communities that depend on the stability of the United States' title for their own governmental and business planning, all underscore that Congress never intended the Reorganization Act to redress interests like respondent's that are so disconnected from the Act's text, operative provisions, and purposes.

In short, just as respondent has attempted to use the APA to obtain relief that Congress expressly forbade in the QTA, so here is respondent attempting to wring out of the Reorganization Act a far more suffocating and ill-fitted remedy than Congress intended under the on-point statutes, IGRA and the National Environmental Policy Act, that actually do address the injuries respondent alleges. Given that, it cannot "reasonably be assumed that Congress intended to permit" respondent to sue for an oversized remedy to address injuries foreign to the terms and purposes of the Reorganization Act's land-into-trust provision. *Clarke*, 479 U.S. at 399. Prudential standing principles have never permitted piggybacking statutory schemes as a means of alchemizing legally foreclosed claims under one statute into a viable APA claim under another statute that—unsurprisingly—is ill-adapted to redress harms that the law does not address.

B. Respondent's Interest In Policing Compliance With Federal Law Does Not Cure His Prudential Standing Problem

The court of appeals held that, regardless of whether the Reorganization Act was "intended to benefit" respondent, prudential standing properly devolved on him because his interests are "cognizable," Pet. App. 11a, and he "can be expected to police the interests that the statute protects, " *id.* at 6a. The court reasoned that respondent "can be expected to police" the Secretary's decision to place lands in trust because "his stake in opposing [Gun Lake's] casino is intense and obvious." *Id.* at 11a. Rather than cure respondent's prudential standing problem, that makes it worse by effectively collapsing prudential and Article III standing. If all prudential standing requires is a cognizable Article III injury and a law-enforcing motivation, then prudential standing will be reduced to a jurisdictional Maginot line.

The requirement that respondent's injuries be "cognizable" (Pet. App. 11a) is no protection. Article III already requires that. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562-563 (1992). The whole point of prudential standing is that it requires more. *See, e.g., National Wildlife Fed'n*, 497 U.S. at 883 ("[T]he failure of an agency to comply with a statutory provision requiring 'on the record' hearings would assuredly have an adverse effect upon the company that has the contract to record and transcribe the agency's proceedings; but since the provision was obviously enacted to protect the interests of the parties to the proceedings and not

those of the reporters, that company would [not have prudential standing under the statute].").

Nor is there any administrable substance to the court of appeals' supposition that it can independently discern whom Congress expected to "police" agency compliance with the law and whom it did not. The whole reason that prudential standing doctrine has long insisted on alignment between the plaintiff's asserted interests and the statute's textual zone of interests and remedial reach is because that is the best evidence of whom Congress wanted to enforce its laws and, more specifically, whether Congress intended to "grant[] persons in the plaintiff's position a right to judicial relief." *Warth*, 422 U.S. at 500. Having unplugged its prudential standing analysis from that traditional inquiry, however, the court of appeals offered no explanation of how courts are supposed to independently determine which plaintiffs with arguable Article III injuries have—and which do not have—a sufficiently "intense and obvious" interest (Pet. App. 11a) in the law to pass that court's prudential standing threshold.

In addition, the court's emphasis on respondent's "intense" desire to "police" agency compliance with the law cannot be reconciled with the ample Article III precedent holding that "the essence of standing 'is not a question of motivation but of possession of the requisite * * * interest.'" *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 486 n.21 (1982). *See also Defenders of Wildlife*, 504 U.S. at 576 (Article III standing cannot be predicated on a plaintiff's interest in ensuring "executive officers' compliance with the

law"). Nowhere does the court explain why a factor considered irrelevant to the Article III standing question could play such a central role in establishing prudential standing.

Finally, the court of appeals' reliance (Pet. App. 7a-8a) on the Interior Department notice regulation implementing Section 465 was misplaced. *See* 25 C.F.R. § 151.12(b). The court reasoned that, because the regulation affords "affected members of the public" an opportunity to seek judicial review before the Secretary places land into trust, the regulation signifies that "individuals like [respondent] who live close to proposed gaming establishments" fall within the Reorganization Act's zone of interests. Pet. App. 8a-9a.

That far overreads the regulation. It simply allows APA challenges to be brought under any properly invoked statute, not necessarily the Reorganization Act, before the QTA cuts off jurisdiction. 61 Fed. Reg. 18,082 (April, 24, 1996) (notice requirement "allows interested parties to seek judicial or other review under the Administrative Procedure Act"). Thus, had respondent complied with the regulation's 30-day window, the regulation would have allowed him to file an APA challenge under IGRA before title to the Bradley Tract transferred to the United States and the QTA attached, because his alleged injuries appear to fall within IGRA's zone of interests.

The regulation thus does nothing more than leave the window to judicial review open for those who otherwise have standing to bring suits. It certainly was never meant to transmogrify all legal objections to a trust decision under other statutes into viable

and remediable claims under the Reorganization Act. Indeed, in its Federal Register notice promulgating the regulation, the Interior Department did not even refer to judicial review under Section 465. The only basis for judicial review referenced in the notice was a possible constitutional challenge under the "non-delegation" doctrine. *See* 61 Fed. Reg. 18,082 (April 24, 1996) (citing *South Dakota v. United States Dep't of the Interior*, 69 F.3d 878 (8th Cir. 1995), *cert. granted and judgment vacated sub nom. Department of the Interior v. South Dakota*, 519 U.S. 919 (1996)).

Likewise, the Secretary's announcement of her decision to place the Bradley Tract into trust under Section 465 did not refer to a possible Section 465 challenge or in any way regulatorily expand the Reorganization Act's zone of interests. Rather, the announcement focused on the proposed use of the land for a gaming operation and concluded that such a use of the land complied with IGRA and the National Environmental Policy Act. 70 Fed. Reg. 25, 596 (May 12, 2005). Thus, if anything, the announcement invited challenges under those two statutes, which is how the plaintiff in *MichGO* proceeded. 525 F.3d at 26.[14]

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[14] The court of appeals also cited to 25 C.F.R. § 151.10(c) & (f). Pet. App. 10a. But the considerations listed in Section 151.10 simply flesh out the factors the Secretary will weigh in his or her discretion in determining whether the trust acquisition would fulfill the statutory purposes outlined in 25 C.F.R. § 151.3. "The purposes for which the land will be used," 25 C.F.R. § 151.10(c), bear obvious relevance to determining whether the trust acquisition actually will "facilitate tribal self-determination, economic development, or Indian housing," 25 C.F.R. § 151.3(a)(3). Likewise, the consideration of

Beyond that, the prudential standing doctrine requires a plaintiff challenging agency action under a statute to fall within the zone of interests of the "'relevant statute.'" *National Wildlife Fed'n*, 497 U.S. at 883. A plaintiff cannot establish prudential standing by dint of a regulation because the zone-of-interests requirement enforces and respects Congress's legislative judgments, not Executive Branch policies. If Congress did not intend to include a plaintiff within the zone of interests of a statute, an administrative agency cannot amend the statute's reach via regulation. *See American Fed'n of Gov't Employees v. Rumsfeld*, 321 F.3d 139, 145 (D.C. Cir. 2003) ("[R]egulations * * * are not statutes, and thus cannot confer [prudential] standing[.]").[15]

"[j]urisdictional problems and potential conflicts of land use," 25 C.F.R. § 151.10(f), equally informs the tribal development goals and a balanced assessment of the acquisition's impact on the "state and local governments having regulatory jurisdiction over the land to be acquired," 25 C.F.R. § 151.10, which is a central function of that regulation. Because private individuals, unlike state and local governments, are not given advance notice of tribal applications for trust acquisitions, this regulation does not create a mandate for objections like respondent's to dictate the Secretary's initial trust decision. Even less so could it control the only relevant question here, which is whether the Reorganization Act's statutory provisions and purposes coincide with respondent's private gambling and aesthetic interests.

[15] While Gun Lake did not dispute respondent's Article III standing at the pleading stage, Gun Lake intends to do so should this case proceed any further procedurally. *See Defenders of Wildlife*, 504 U.S. at 561 ("At the pleading stage, general factual allegations of [Article III] injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presum[e] that general allegations embrace those specific

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

Conly J. Schulte
Shilee T. Mullin
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, CO 80302
(303) 673-9600

Amit Kurlekar
AKIN, GUMP, STRAUSS, HAUER & FELD LLP
580 California Street, Suite 1500
San Francisco, CA 94104

Patricia A. Millett
Counsel of Record
James Meggesto
James E. Tysse
AKIN, GUMP, STRAUSS, HAUER & FELD LLP
1333 New Hampshire Ave., NW
Washington, DC 20036
(202) 887-4000
pmillett@akingump.com

Michael C. Small
AKIN, GUMP, STRAUSS, HAUER & FELD LLP
2029 Century Park East, Suite 2400
Los Angeles, CA 90067

February 7, 2012

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facts that are necessary to support the claim. In response to a summary judgment motion, however, the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts[.]") (internal citations omitted).